2384.

SUPREME COURT OF THE UNITED STATES.

No. 130.

WHITE WATER TOWNSHIP OF FRANKLIN COUNTY, PLAINTIFF IN ERROR,

vs.

JOHN H. QUICK, AUDITOR, AND WILLIAM ROBESON, TREASURER OF FRANKLIN COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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GIDEON, Print.

Pleas before the Honorable William Z. Stuart, Samuel B. Gookins, Samuel E. Perkins, Andrew Davidson, judges of the supreme court of the State of Indiana, held at the state-house, in the city of Indianapolis, on the 11th day of June, in the year of our Lord one thousand eight hundred and fifty-five.

JOHN H. QUICK, Auditor, and William Robson, Treasurer, vs. WHITE WATER TOWNSHIP, in Franklin County. } Civil Action.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of November, A. D. 1855, came the appellants, by George Holland and J. D. Howland, their attorneys, and filed in the office of the clerk of the supreme court of said State a transcript of the record and proceedings in the above entitled cause, which reads in the words and figures following, to wit:

Pleas held at the court-house, in the town of Brookville, in the county of Franklin and State of Indiana, on the 15th day of August, in the year of our Lord one thousand eight hundred and fifty-five, before the Honorable Reuben D. Logan, judge of the fourth judicial circuit of the State of Indiana, being the August term of the Franklin circuit court, in the year aforesaid.

WHITE WATER TOWNSHIP of Franklin County vs. JOHN H. QUICK, Auditor, and William Robeson, Treasurer of Franklin County. } Civ. Action.

Be it remembered, that heretofore, to wit, on the twenty-first day of May, A. D. 1855, was filed in the office of the clerk of the Franklin circuit court, by said plaintiff against said defendants, the following complaint, which is in the words and figures following, to wit:

In the Circuit Court of Franklin County—August term, 1855.

WHITE WATER TOWNSHIP of Franklin County vs. JOHN H. QUICK, Auditor, and William Robeson, Treasurer of Franklin County.

The plaintiff complains of said defendants, and says that by the

act of Congress of the United States of 26 March, 1804, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," and also by the act of the same body of the 19th April, 1816, entitled "An act to enable the people of the Indiana Territory to form a constitution and State government, and for the admission of such State into the Union on equal footing with the other States," and by the ordinance of the convention which formed the first constitution of this State, as well as by sundry acts of the general assembly of Indiana, Congressional township No. 8, of range No. 1, situate in said Franklin county, became a body corporate, and was seized of section 16 in said Congressional township, under the laws aforesaid, for the use of schools, and that by virtue of the statute in such case made and provided, said section was sold and converted into cash and securities, which in gross amount to the sum of $6,698 23; which said sum, from the date of said sale, (16 January, 1837,) has been kept in the care and custody of various county and township officers, and the interest annually arising therefrom applied to the support of common schools in said Congressional township. And the plaintiff alleges, that the sum for the current year collected for distribution on the third Monday in May, 1855, from the interest on said Congressional township fund, is $374 20, which is now (with the said principal fund) in the hands and under the care and control of the said defendants.

And plaintiff avers, that by the school law of June 14, 1852, the corporate powers of said Congressional township No. 8, range No. 1, &c., were repealed, and the plaintiff was constituted a body corporate; and the plaintiff also avers, that the geographical limits of the said civil township—White Water township of Franklin county—are identically the same with those of said Congressional township No. 8, range 1, &c., and that the inhabitants of said White Water township (the plaintiff herein) are the owners of said Congressional township fund, and are, for the present year ending May 21, 1855, entitled to distribution amongst them of said sum of $374 20 for common school purposes in said township.

And the plaintiff further shows, that as nearly as can be ascertained, and taking as a basis for the statement the annual report of the superintendent of public instruction of this State, of January 19, 1855, there are in said White Water township 600 children legally entitled to share in the distribution of the proceeds of this school fund, and that thus the per capita distribution of said sum of $374 20 in said township will be a fraction over 62 cents.

And the said plaintiff further shows, that by an act of the general assembly of the State of Indiana, approved March 5th, 1855, entitled "An act to provide for a general system of common schools, the officers thereof, and their respective duties, &c.," it is provided in the 97th section thereof, "the State superintendent shall an-

nually, by the fourth Monday in April in each year, make out a statement, showing the number of scholars in each county of the State, the amount of the income of the common school fund in each county for distribution, and the amount of taxes collected for school purposes, and shall apportion the same to the several counties of the State, according to the enumeration of scholars therein, without taking into consideration the Congressional township funds in such distribution;" and also in the 101st section thereof, "the treasurer of the several counties shall annually, on the third Monday of May, make distribution of the income of the common school fund to which his county is entitled, (upon the warrant of the county auditor,) to the several townships and incorporated cities and towns of the county, which payment shall be made to the treasurer of each township; and in making said distribution, the auditor shall ascertain the amount of the Congressional township fund belonging to each city, town, and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town, and township, as near as may be, according to the number of scholars therein: Provided, however, that in no case shall the income of the Congressional township be diminished by such distribution, and directed to any other township."

And the plaintiff avers that the common school fund, as defined by law in the 8th article of the constitution of the State of Indiana, does not in any way embrace the proceeds of an annual tax levied and collected by law for the purposes of common schools, and that such tax is, therefore, not a part of the common school fund.

And the plaintiff alleges that the said pretended legislation of the general assembly of the State of Indiana, and particularly the sections number 97 and 101, above set out, are, as the plaintiff is advised, in contravention of the acts of Congress, and of the constitution of this State, and are therefore void. And the plaintiff further shows, as will appear from the report of said superintendent of public instruction, of date of May 9th, 1855, made in conformity with the 97th section of the act of March 5th, 1855, the gross sum apportioned by said superintendent out of the annual school tax for 1854, and the income of the common school fund (except the Congressional township fund) and designated by said officer for distribution in the county of Franklin, is $5,243 76; and from the same report the number of children in said county entitled to share in the distribution of this sum is 7,283, making out of the sum so apportioned by the superintendent of public instruction a distribution, per capita, of 72 cents; and said plaintiff insists that said White Water township is entitled, under the acts of Congress, and the laws of the State of Indiana, to a full per capita distribution of said general tax and common school fund, without any decrease or diminution thereof, and without any apportionment thereof amongst

the several Congressional townships of said county, so as to effect such proposed and illegal equalization of the Congressional township fund, and that the sum to which the said plaintiff is entitled, at the rate of 72 cents for 600 children, amounts for the current year to the gross sum of $432, and with the Congressional township fund to which the plaintiff is entitled, $374 20, makes the aggregate sum of $806 20.

And the plaintiff shows that in the apportionment so as aforesaid made by said superintendent of public instruction of 72 cents per capita amongst the children in the State entitled to a distributive share of funds raised for purposes of education, the sum raised by taxation in the year 1854, and the proceeds of the common school fund, (except the Congressional township fund,) for the current year, are confused, and the plaintiff does not know, and has not within reach the means of learning, and so cannot state what proportion of the said apportionment results from said annual tax for school purposes, and what from the common school fund, but the plaintiff believes that by far the greater proportion said sum so apportioned is raised by the annual tax aforesaid.

And the plaintiff further complains that said defendants, the said auditor and treasurer of Franklin county, pretending to be governed by said act of 5th March, 1855, and particularly by the 101st section of said act, above set forth, are about to equalize, in the sum so apportioned to Franklin county by said superintendent, such inequalities as exist between the several Congressional townships and parts of Congressional townships in said county in their respective Congressional township funds, by means of an unequal distribution of the sum so apportioned to the said county, avoiding, however, any reduction of the Congressional township fund, or any diversion thereof, and the plaintiff files herewith, as a part of his complaint, a statement marked "A," showing the amount of the proceeds of the Congressional township fund for present distribution of the several Congressional townships, and parts of Congressional townships, in said county, as nearly as the same can be ascertained, and which is in the aggregate $2,729 55; and that this sum, with the sum so as aforesaid apportioned to said county by the superintendent of public instruction ($5,243 76,) makes the aggregate sum of ($7,973 31,) and amongst the children of the county entitled to distribution ($7,283) a per capita distributive share to each of about $1 09, and that under such proposed distribution and equalization the sum of $1 09 for every child by law entitled would be all that would be allowed by said defendants and paid to the plaintiff, when in fact the plaintiff is entitled to receive a fair and equal distribution of the said common school fund and said tax, to wit, 72 cents for each child entitled, without any reference to the Congressional township fund, which said distribution would give to the plaintiff a per capita distribution of $1 34, or thereabouts, for 600 children, or in the aggre-

gate $804, as above stated, and the plaintiff avers that the said White Water township would, by such illegal distribution, be wronged out of the sum of $150.

And the plaintiff shows that by reason of the near approach of the period fixed by law for the distribution, and for the further reason that said distribution when made will inflict on the pl'f an irreparable injury, the case of the pl'f is one of emergency, in which the notice otherwise required by law cannot safely be given, and the plaintiff prays the court for an injunction directed to the defendants strictly forbidding them from any such distribution of the said tax and common school fund as would deprive the plaintiff from as full and equal participation therein as if the plaintiff had no Congressional township fund; and on a final hearing, a decree directing such distribution as the complaint seeks, to wit, of 1 34, or thereabouts, per capita, and such other legal relief as may be required.

HOLLAND & HOWLAND, *Att'ys.*

Joseph Wilson, a resident of White Water township, being sworn, on his oath says, that the foregoing complaint is true in substance, and as to matter of fact, as he verily believes.

JOSEPH WILSON.

Sworn and subscribed to this 21st May, 1855, before me.

JOHN M. JOHNSTON, *Cl'k F. C. C.*

The schedule marked "A," and referred to in the foregoing complaint, is in the words and figures following, to wit:

Congressional township fund of Franklin county. Proceeds for distribution on the 3d Monday in May, 1855.

Town.	9,	range	1	435 17
"	8,	"	1	374 20
"	12,	"	12	788 51
"	12,	"	13	151 73
"	11,	"	13	94 04
"	9,	"	3	19 77
"	10,	"	3	14 39
"	10,	"	12	67 32
"	8,	"	2	59 94
"	11,	"	12	132 79
"	9,	"	2	104 30
"	10,	"	1	167 21
"	10,	"	2	206 71
"	12,	"	11	113 47
				$2,729 55

Afterwards, to wit, on the day and year aforesaid, was filed in the office of the clerk of the court aforesaid the following injunction and undertaking by said pl'ff, which injunction and undertaking are in the words and figures following, to wit:

WHITE WATER TOWNSHIP vs. JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer.	Order of Injunction.

Now, at this day comes the said plaintiff by counsel, and on a complaint filed in the Franklin circuit court as above entitled, verified by the oath and affidavit of Joseph Wilson, a resident of said county, moves before John M. Johnston, clerk of said court and county, for an injunction against the said defendants, restraining them making any such distribution of the annual tax collected for purposes of common school education, and the common school fund, as regards the alleged inequalities in the amount of the Congressional township fund, between the several Congressional townships and parts of Congressional townships in the county of Franklin, and proposes to remedy and equalize the same by unequally distributing said tax and common school fund; and the said complaint being inspected, and the case of the plaintiff appearing to be one of emergency, in which notice cannot be given without danger to the plaintiff's rights, and the said plaintiff having filed with said clerk in said cause an undertaking to pay all damages and costs in the premises according to law, with Joseph Wilson and John Golding sureties, it is therefore ordered, that said defendants be, and they are hereby strictly enjoined and forbidden from distributing the annual tax fund collected for common school purposes, and the common school fund (except the Congressional township fund,) in any other way than by a pro rata distribution to each township treasurer, according to the enumeration of children therein. This injunction to stand until the 7th day of June, 1855, to enable the plaintiff to give defendants notice.

Given under my hand and seal of said court this 21st day of June, 1855.

JOHN M. JOHNSTON,
Clerk of the Franklin Circuit Court.

THE STATE OF INDIANA,
Franklin County, ss.

WHITE WATER TOWNSHIP of Franklin County vs. JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer of Franklin County.	Franklin Circuit Court.

We undertake that the above named plaintiff shall pay to the above named defendants all damages and costs which may accrue by reason of the injunction in this action.

May 21st, 1855.

JOSEPH WILSON, [SEAL.]
JOHN GOLDEN. [SEAL.]

Approved by me this 21st day of May, A. D. 1855.

JOHN M. JOHNSTON,
Clerk of Franklin Circuit Court.

And afterwards, to wit, on the 7th day of June, A. D. 1855, was filed in the office of the clerk of the court aforesaid, an order of injunction, which follows in the words and figures, to wit:

In vacation of the Franklin Circuit Court.

STATE OF INDIANA,
Frankin County, ss.

WHITE WATER TOWNSHIP of Franklin *Township*
vs.
JOHN H. QUICK Auditor, WILLIAM ROBESON, Treasurer of Franklin County.
} Order of Injunction.

And now, at this day, to wit, on the 7th day of June, A. D. 1855, at the clerk's office of the Franklin circuit court, before John M. Johnston, clerk of said court, comes the said plaintiff by Holland and Howland, her attorneys, and the said defendants by Jones and Berry, their attorneys, *come* and enter their appearance to the said plaintiff's application for an injunction in the above entitled case, and thereupon, after examining all and singular the premises, and hearing argument of counsel, it is therefore ordered by me, the said clerk, that the temporary injunction granted by me on the 21st day of May, A. D. 1855, in the above entitled case, be, and the same is hereby, continued until the further order of the Franklin circuit court in the premises.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Brookville, this 7th day of June, [L. S.] in the year of our Lord one thousand eight hundred and fifty-four.

JOHN M. JOHNSTON, *Clerk.*

And afterwards, to wit, at the August term of the Franklin circuit court, before the judge aforesaid, on the 8th day of August, A. D. 1855, come the parties, by their attorneys, and thereupon, upon motion of the said plaintiff, the said defendants are ruled to answer on or before the calling of the cause on to-morrow morning.

And afterwards, to wit, at the term last aforesaid of the court aforesaid, for the county aforesaid, before the judge aforesaid, on the 10th day of August, A. D. 1855, come the parties, by their attorneys, and thereupon the said defendants file their demurrer to the said plaintiff's complaint, and day is given, &c. The demurrer, as referred to above, is in the words and figures following, to wit:

WHITE WATER TOWNSHIP of Franklin County
vs.
JOHN H. QUICK, Auditor, WILLIAM ROBESON, Treasurer of Franklin County. } Cir. Ac.

The defendants demur to the plaintiff's complaint herein for the following ground of objection:

That the said plaintiff's complaint does not state facts sufficient constitute a cause of action.

JONES & BERRY,
Att'ys for Def'ts.

And afterwards, to wit, at the term last aforesaid of the court aforesaid, for said county of Franklin, before the judge aforesaid for said court, on the 15th day of August, A. D. 1855, was had the following, to wit:

Now at this time comes the plaintiff, by George Holland and J. D. Howland, their attorneys, and the said defendants, by their attorneys, come also, and this cause is submitted to the court on the demurrer heretofore filed by said defendants to the plaintiff's complaint, and argument being heard, and after deliberation had, it is considered by the court that said demurrer be overruled, and that the defendants answer over.

And thereupon the defendants decline to answer further than they have already done by their said demurrer. It is therefore further considered by the court that the injunction heretofore allowed by the clerk of this court in vacation be made perpetual, and that said defendants are restrained from making any distribution of the said tax and of the proceeds of the common school fund aforesaid, which would diminish to said plaintiff their full share thereof, at the rate of 72 cents to each and every child in said township entitled to share in such distribution; and that the said defendants, in making their distribution of said tax and the proceeds of said fund in said county, do allow and distribute to the plaintiff their full share thereof, as if there was not any Congressional township fund in existence. And it is further considered that the plaintiff recover of said defendants their costs in this behalf. And the said defendants pray an appeal to the Supreme Court, which is granted by an agreement of parties, without bond.

THE STATE OF INDIANA,
Franklin County, ss.

I, John M. Johnston, clerk of the circuit court for the county of Franklin and State of Indiana, do hereby certify the foregoing to be full, true, and complete copies of all the papers and entries of

the above entitled cause remaining on file or of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Brookville, this 7th day of September, A. D. 1855.

JOHN M. JOHNSTON, *Clerk.*

In the Supreme Court.

JOHN H. QUICK, Auditor, WILLIAM ROBISON, Treasurer of Franklin county,
vs.
WHITE WATER TOWNSHIP, in Franklin county.

The appellants, by J. Morrison, their attorney, say, that in the transcript and proceedings and judgment aforesaid there is error in this, that the judgement should have been for the appellant, where it was given for the appellee. The court erred in setting aside the distribution of the common school fund in said county, and in requiring and fixing another ratio.

J. MORRISON,
Att'y for Appellant.

The court will please consider the brief in the case of Springfield Township the brief in this.

J. MORRISON.

In nothing is there error.

GEO. HOLLAND,
J. D. HOWLAND.

And afterwards, to wit, at a court begun and held on the 26th day of November, 1855, on the second day of said term, at which time come the parties by their attorneys, and, by agreement, submit the cause to the court, but the court not being sufficiently advised in the premises, take time to advise thereon.

And afterwards, to wit, at a court begun and held on the 26th day of November, 1855, and continued from day to day until the 26th day of May, 1856, at which time come the parties by their attorneys, but the court not being sufficiently advised in the premises, take time to advise thereon.

And afterwards, to wit, at a court begun and held on the 26th day of May, 1856, and continued from day to day until the 11th day of June, 1856, at which time come the parties by their attorneys, and the court being now sufficiently advised of and concerning the premises, give the following opinion and judgment, pronounced by Judge Perkins:

Complaint and prayer for an injunction restraining the auditor and treasurer of Franklin county from distributing the school

fund in said county, in accordance with the provision of the school law of 1855. The complaint is by White Water Township, who, as plaintiff, says that she was the owner of section 16 in said township, a Congressional township, and in 1836 sold the same for 7,423 dollars and 36 cents; which sums have since been administered, so that the interest has been applied to the support of common schools in the township. The complaint then proceeds:

And the said plaintiff alleges, that the annual sum collected for distribution for school purposes in said township, of the interest accrued on the said fund up to the third Monday in May, 1855, amounts to the sum of 435 dollars and 17 cents; which last named sum is in the hands and custody and under the control and management of the defendants to this complaint.

And the plaintiff complains that said Congressional township remained, under the law of the State, a body politic and corporate until the passage of the school law of June 14, 1852, by the general assembly of Indiana, entitled "An act to provide for a general and uniform system of common schools and school libraries, and matters properly connected therewith," when the corporate powers of the said Congressional township were repealed, and the said plaintiff, by virtue of the general laws of the State, was erected into a body politic and corporate. And the plaintiff avers, that the geographical limits of the said Springfield township, in Franklin county, are identically the same with those of said Congressional township No. 9, range No. 1, and that the inhabitants of said Springfield Township (the plaintiff herein) are the owners of said Congressional township fund, and are, for the present year, ending on the 3d Monday of May, 1855, entitled to distribution among them of said sum of 435 dollars and 17 cents, for common school purposes in said township.

And said plaintiff further shows, that as nearly as can be ascertained, and taking the report of the superintendent of public instruction of the State of January 19th, 1855, as the basis of the estimate, there are in said Springfield township six hundred and eight children legally entitled to distribution of the school fund; and that thus the per capita distribution of said sum of 435 dollars and 17 cents among said children in said township for the current year, as aforesaid, amounts to a fraction over 71 cents out of said Congressional township fund.

And said plaintiff further shows, that by an act of the State of Indiana, approved March 5th, 1855, entitled "An act to provide for a general system of common schools, the officers thereof, and their respective duties, and matters properly connected therewith, and to establish township libraries and for the regulation thereof," it is provided in the 97th section thereof as follows, to wit: The State superintendent shall annually, on the 4th Monday in April in each year, make out a statement showing the number of scholars

in each county of the State; the amount of the income of the common school fund in each county for distribution; the amount of taxes collected for school purposes, and shall apportion the same to the several counties in the State, according to the enumeration of scholars therein, without taking into consideration the Congressional township funds in such distribution. And also, in the 101st section thereof, as follows, to wit: The treasurer of the several counties shall annually on the 3d Monday of May, make distribution of the income of the common school fund to which his county is entitled, (upon the warrant of the county auditor,) to the several townships and incorporated cities and towns of the county, which payment shall be made to the treasurer of each township; and in making said distribution the auditor shall ascertain the amount of the Congressional township fund belonging to each city, town and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town and township, as near as may be, according to the number of scholars therein: Provided, however, that in no case shall the income of the Congressional township be diminished by such distribution, and diverted to any other township.

And the plaintiff further shows, that the common school fund, as fixed and defined by law, consists of the Congressional township fund, and the lands belonging thereto; the surplus revenue fund, the saline fund, and the fund arising from the 114th section of the charter of the State Bank of Indiana, the fund derived from the sale of the county seminaries, and the fines assessed for breaches of the penal acts of the State, and from all forfeitures which may accrue; all lands and other estates which may escheat to the State for want of heirs or kindred entitled to the inheritance; all lands that may be granted to the State where no special purpose is expressed in the grant, and the proceeds of the sale thereof, including the proceeds of the sales of the swamp lands, and taxes that may be assessed on the property of corporations for common school purposes; and that said common school fund does not embrace in any way the general school tax levied by the law of this State, and that such tax is therefore not a part of the common school fund of the State.

And the plaintiff avers, that the said attempted legislation of the general assembly of Indiana, and particularly the sections of said act of March 5th, 1855, and the proposed plan of distributing the general tax, levied for common school purposes, are, as plaintiff is advised, in contravention of the act of Congress under which the plaintiff holds said common school fund, derived as aforesaid from the sale of said section sixteen, of township nine, of range one, &c.; and that also the same are in contravention of the constitution of the State of Indiana, and are therefore void.

The complainant further shows that the defendants, the auditor and treasurer, are about proceeding to equalize among the town-

ships, under the law of 1855, the sum appropriated to Franklin county for common schools. It then proceeds:

And the plaintiff avers, that by reason of the near approach of the period of distribution by said defendants, and also for the reason that when said distribution shall be made, an irreparable wrong will be inflicted on the plaintiff, that the present proceeding is a case of emergency in which notice cannot safely be given to said defendant as in other cases; and the plaintiff prays your honor for an injunction in this case to be granted forthwith, on the plaintiff's complying with such terms as the court may prescribe, directed to said defendants, strictly enjoining them from any such distribution of the money arising from the general common school tax, and from the common school fund, or any part thereof as will in anywise diminish to the plaintiff the full amount due the plaintiff, on a fair and equal per capita division and distribution of the whole of said tax fund, and part of the common school fund aforesaid, without in anywise regarding said Congressional township fund or making the said proposed illegal effort to equalize such Congressional township fund throughout the county; and will your honor adjudge the distribution to be made in conformity with the complaint and prayer of the plaintiff, and grant all other suitable relief in this behalf?

A temporary injunction was granted. On appearing, the defendants demurred to the complaint. The court overruled the demurrer, and adjudged that said defendants should be restrained "from making any distribution of said tax and of the proceeds of the common school fund aforesaid which would diminish the said plaintiffs' *their* full share thereof, at the rate of 72 cents to each and every child in said township entitled to share in such distribution; and that the said defendants, in making their distribution of said tax and the proceeds of said fund in said county, do allow and distribute to the plaintiffs their full share thereof, as if there was not any Congressional township fund in existence. And it is further considered that the plaintiffs recover of the defendants their costs in this behalf. And the said defendants pray an appeal to the Supreme Court, which is granted, by agreement of parties, without bond."

It is shown, in a part of the complaint not here set out, that if the sum appropriated out of the State funds to Franklin county is distributed without reference to the township fund, it will give out of that sum 72 cents to each child in White Water township entitled, &c.; but, if distributed upon the principle of equalization under the statute, it will give to each a less sum than 72 cents. In short, that if the law of equalization is not regarded, each child in White Water township will draw 71 cents from the Congressional township fund, and 72 cents from the State fund, making, from both, 143 cents; while, on the other hand, if equalization

under the statute is carried out, each child in said township will receive from the two sources but 109 cents.

Sufficient of the complaint has now been imbodied in this petition to present the question to be decided. The point of it may be briefly restated thus: The Congress of the United States gave the sixteenth section of land in each township in this State to the inhabitants respectively of the township for the support of the common schools. The sections were of unequal value, and, on sale, produced unequal amounts, even relatively to the number of scholars in the respective townships. They did not, therefore, constitute an equal and uniform school fund, producing uniform privileges of education. But the legislature could not differently distribute the fund, because of the terms of the grant of the sections. The State vs. Springfield Township, &c., 6 Ind. R., p. 83. The State also possessed a number of funds which she devoted to common school purposes, and her legislature was vested with a taxing power by which it could add to the funds so appropriated.

Under these circumstances, the legislature enacted that the sums of money arising annually from these latter sources should be just and unequally distributed in the townships of the several counties, as was the interest on the Congressional township fund, but in inverse order, so that the aggregate amount from the two sources, viz: the Congressional township fund and the appropriation on the part of the State distributed in each township, should, relatively to the number of scholars therein, be equal.

And the main question raised and argued by counsel is, could the legislature enact such a law? Is the enactment constitutional?

The act, so far as it is objected to, makes an appropriation of money from the State treasury to the several counties of the State, to be distributed among the townships of those counties in a certain manner, and to be expended in supporting common schools. The act does not (as perhaps it might) attempt to apply to counties the principle applied to townships in distribution.

The money appropriated for such distribution is derived from two sources, viz: taxation, and interest upon funds devoted by the State to common school purposes. It is contended, it is true, that the sum derived from taxation is not directed to be distributed with the interest upon the named funds, and in terms it is not; but we think, taking the whole statute together, that such is the fairly implied intention of the legislature.

Upon general principles the power of the legislative department is complete, and its discretion uncontrollable in the disposition of the revenues of the State. A treasury seems to be regarded as a necessary element in the constitution of at least a respectable State or nation: 1 Kent, 189. Without money a government is powerless; *possed* of it, its legislature expends it, as to time, place, and manner, according to the exigencies of occasion, being

answerable only to the electors, the people. And if no provision of our constitution interferes, as that constitution, measurably abandoning (whether wisely or unwisely it is not for us to say) the voluntary system, has made the education of the children of the State a public duty of the State, the legislature may appropriate money for that purpose to different counties, as it may deem their respective wants require.

We know of no provision of the constitution controlling the distribution of that part of the money in question derived from taxation, unless it be the one requiring laws for the support of common schools to be uniform. We do not say that the provision is applicable to such a case as this; but if it is, it must be conceded that it also applies with equal force to the distribution of the interest on the permanent funds.

And as to this interest, it may be that the section of the constitution requiring it to be distributed for the use of schools on the several counties, taken by themselves, might fairly imply that it should be appropriated among them by some fixed rule of equality. But the implication would not reach to the distribution among the townships: Art. 8, ss. 3, 4, 5, and 6. These sections, however, cannot be construed by themselves. They form a part of the 8th article, which being devoted to one subject, all of its sections must be construed together. Regarded thus, we find that the whole section designates what existing matters should constitute the common school fund, naming such as were appropriated by the State, and also a certain trust fund, viz: the Congressional township donated by Congress to be thus used—6 Ind. R., 83—which aggregate fund it is declared may be increased, but not diminished. We find it further ordains that the interest accruing on all the parts of the fund shall be distributed by law among the several counties of the State for the support of common schools; but that the interest on one part, viz: the Congressional trust fund, shall be distributed according to the terms of the gift, and that, by the use of all these means, including, of course, the power of taxation, the legislature shall provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

We find, then, as the result of these investigations, that the constitution requires—

1st. That the interest on the Congressional township trust fund shall be distributed or remain with the townships alike unequally, as the fund itself exists unequally in the townships; but,

2d. That the proceeds of the whole of the common school fund, of which, as we have seen, the Congressional township is to be considered in distribution as a part, are to be so distributed as to produce equality and uniformity in the school system throughout the State; and as a necessity, therefore,

3d. That the proceeds of said fund, other than the interest on

the Congressional township fund, must be unequally distributed in order to produce the equality required by the constitution in the final result. Instead, therefore, of the prohibition, we find a command, for an unequal distribution of the school fund other than the Congressional portion of it.

And should the point heretofore briefly alluded to now be pressed, that the law violates that section of the Constitution requiring laws to be uniform on this subject, a point on which we intimate no opinion, it will be a sufficient answer to say that the section is locally, and in time, anterior to the section of the educational article in that instrument above epitomized, and hence, if irreconcilable with, is so for abrogated by them. If the different sections cannot be liquidated and made to stand together, it is a rule of construction not derived from positive law, but from the nature and reason of the thing, as *consant* to truth and propriety, that the last in order of time shall be preferred to the first. Federalist No. 78; Spencer vs. the State, 5 Ind. R. 41. The school law in question conforms to the spirit of the Constitution in the manner of distributing the school fund among the townships of the several counties of the State. Perhaps the same principle is required by the organic law to be applied to the distribution among the counties themselves.

The law does not conflict with any act of Congress, as it does not assume to vary the distribution of the Congressional township fund from the condition of the grant.

It is therefore considered by the court that the judgment of the court below be in all things reversed at the costs of the appellee, and that the cause be remanded to said court for further proceedings to be had therein.

All which is ordained to be certified to said court. It is further considered by the court, that the appellant recover of the appellee the sum of dollars and cents for his costs and charges in this behalf expended.

Stuart, J., dissents from the above opinion.

STATE OF INDIANA, *ss.*

I, William B. Beach, clerk of the supreme court of said State, hereby certify that the foregoing is a full and true copy of the transcript, record, and all proceedings had in the above entitled cause.

In witness whereof, I hereunto subscribe my name, and affix the [SEAL.] seal of said court, at the city of Indianapolis, this third day of December, A. D. 1856.

WM. B. BEACH, *C. S. C.*
Per JOSEPH S. KENTZEL, *Dep.*

UNITED STATES OF AMERICA.

The President of the United States of America to the Judges of the Supreme Court of the State of Indiana, greeting:

Because, as in the record and proceeding, as also as in the renditon

of a judgment in a plea, which is in the said court before you, between John H. Quick, auditor, and William Robeson, treasurer of Franklin county, appellants, and White Water Township, of Franklin county, appellee, a manifest error hath happened, to the great damage of said White Water Township, of Franklin county, as by the complaint of said township appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being therein inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the supreme court of the State of Indiana hereunto affixed, at Indianapolis, this 2d day of March, A. D. 1857.

[SEAL.]

W. B. BEACH, *C. S. C.*
By JOSEPH S. KENTZEL, *Deputy.*

The United States of America to John H. Quick, Auditor, and William Robeson, Treasurer of Franklin county, in the State of Indiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Indiana, wherein White Water Township, of Franklin county, is plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel E. Perkins, one of the justices of said supreme court of the State of Indiana, this second day of March, A. D. 1857.

S. E. PERKINS,
A. Judge Sup. Court Ind.

In the Supreme Court of the United States.

WHITE WATER TOWNSHIP, of Franklin County, Plaintiff in error, vs. JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer, Defendants in error.	Assignment of Errors.

In error to the Supreme Court of the State of Indiana.

Come the said plaintiff in error and says, that there is manifest error in the record and proceedings in the above entitled cause, and sets forth and shows to the Supreme Court of the United States, as special grounds of error in this behalf, as follows, that is to say:

1st. That the provision of the constitution of the State of Indiana contained in section 2 of article VIII of said instrument, and which is as follows, to wit: "The common school fund shall consist of the Congressional township fund and the lands belonging thereto," is in contravention of the first subdivision of the 6th section of the act of Congress, approved April 19, 1816, entitled "An act to enable the people of the Indiana Territory to form a constitution and State government, and for the admission of such State into the Union on equal footing with the original States," and is therefore void.

2d. That the said 97th and 101st sections of the act of the assembly of the State of Indiana, approved March 5th, 1855, entitled "An act to provide for a general system of common schools, the officers thereof, and their respective duties," &c., which sections are as follows:

97th. "The State superintendent shall annually, by the fourth Monday in April in each year, make out a statement showing the number of scholars in each county of the State, the amount of the income of the common school fund in each county for distribution, and the amount of taxes collected for school purposes, and shall apportion the same to the several counties of the State, according to the enumeration of scholars therein, without taking into consideration the Congressional township found in such distribution."

101st. "The treasurer of the several counties shall annually, on the third Monday of May, make distribution of the income of the common school fund to which his county is entitled (upon the warrant of the county auditor) to the several townships and incorporated cities and towns of the county, which payment shall be made to the treasurer of each township, and in making said distribution the auditor shall ascertain the amount of the Congressional township fund belonging to each city, town and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town and township, as near as may be, according to the number of scholars therein: Provided, however, that in no case shall the income of the Congressional township be diminished by such distribution, and diverted to any other township,"—are likewise in contravention of the said provision of the act of Congress described, and therefore void.

3d. That by the law of the land the judgment of said supreme court ought to have been rendered in favor of the plaintiff in error.